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|| EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW

Office of Policy | Legal Education and
Research Services Division

| Policy & Case Law Bulletin
March 23, 2018

Federal Agencies

DOJ

- [Attorney General Directs the Board to Refer its Decisions in Matter of L-A-B-R- et al. to Him for Review — EOIR](#)
27 I&N Dec. 245 (A.G. 2018)

The Attorney General will review issues relating to the question of “[u]nder what circumstances does ‘good cause’ exist for an Immigration Judge to grant a continuance for a collateral matter to be adjudicated?” The Board’s decisions are stayed pending the Attorney General’s review of the matters. He directed that the parties submit any briefs on or before April 17, 2018, and reply briefs on or before May 2, 2018. He further invited interested amici to submit briefs on or before April 24, 2018.

- [Virtual Law Library Weekly Update — EOIR](#)

This update includes resources recently added to EOIR’s internal or external Virtual Law Library, such as Federal Register Notices, country conditions information, and links to recently-updated immigration law publications.

DHS

- [DHS Publishes Notice Extending Employment Authorization for Syrian F-1 Nonimmigrant Students Who Are Experiencing Economic Hardship](#)

The notice extended an earlier notice, which suspended certain requirements for F-1 nonimmigrant students from Syria who are experiencing severe economic hardship as a direct result of the civil unrest in Syria since March 2011. The extension applies to eligible individuals who obtained F-1 nonimmigrant student status by September 9, 2016. The notice became effective on March 15, 2018, and will be effective until September 20, 2019.

DOS

- [DOS Updates 9 FAM](#)

DOS made numerous updates to 9 FAM, including to sections [302.8 \(U\)](#), which revises the

classes of applicants exempt for public charge, [601.8 \(U\)](#), which clarifies requirements for review requests from individuals with regional responsibilities, and [202.2 \(U\)](#), which updates procedures regarding Loss of LPR status per USCIS.

Supreme Court

CERT. GRANTED

- [Nielsen v. Preap](#)

No. 16-1363, 2018 U.S. LEXIS 1776 (March 19, 2018)

Question Presented: Whether a criminal alien becomes exempt from mandatory detention under [section 236(c) of the Act,] 8 U.S.C. § 1226(c) if, after the alien is released from criminal custody, the Department of Homeland Security does not take him into immigration custody immediately.

CERT. DENIED

- [Boggala v. Sessions](#)

No. 17-996, 2018 U.S. LEXIS 1892 (March 19, 2018)

Question Presented: Whether the same meaning and requirements should attach to the words “sufficient facts to warrant a finding of guilt” found in [section 101 (a)(48)(A) of the Act,] 8 U.S.C. § 1101(a)(48)(A) as do to the words “factual basis” found in Fed. R. Crim. P. 11(b)(3).

- [Donjuan-Laredo v. Sessions](#)

No. 16-1363, 2018 U.S. LEXIS 1776 (March 19, 2018)

Question Presented: [Whether the] IJ, the BIA and the Tenth Circuit failed to allow a collateral attack in immigration court on a predicate criminal court conviction pursuant to its longstanding rule that “unless the judgment is void on its face, a conviction cannot be collaterally attacked in removal proceedings,” when in the present case, on its face the conviction was void because with its several references, only an employer or employing agency can commit this crime, and the alien only used false documents to obtain employment and was not in collusion or conspiracy with the employer to defraud the government’s Unlawful Employment of Alien’s program.

- [Jing Guo Jin v. Sessions](#)

No. 17-6398, 2018 U.S. LEXIS 1898 (March 19, 2018)

No questions presented are available at this time.

Third Circuit

- [Bonilla v. U.S. Att'y Gen.](#)

No. 17-2324, 2018 WL 1341550 (3d Cir. Mar. 15, 2018) (unpublished) (Reasonable Fear)

The Third Circuit denied the PFR, holding that the lack of an attorney for the petitioner's reasonable fear review by an Immigration Judge did not constitute a violation of due process.

- [Lewin v. U.S. Att'y Gen.](#)

No. 17-1846, 2018 WL 1386476 (3d Cir. Mar. 15, 2018) (Aggravated Felony)

The Third Circuit denied the PFR, holding that the petitioner's conviction for receiving stolen property under N.J. Stat. Ann. § 2C:20-7(a) is categorically an aggravated felony under section 101(a)(43)(G) of the Act, because the statute's mens rea of “knowing that [the property] has been stolen, or believing that it is probably stolen” meets the generic

definition of receipt of stolen property under the Act.

Fourth Circuit

- [Jimenez-Cedillo v. Sessions](#)

No. 17-1477, 2018 WL 1386132 (4th Cir. Mar. 20, 2018) (CIMT)

The Fourth Circuit granted the PFR and remanded to the Board, holding that the Board did not adequately explain its reasoning for abandoning its previous standard for crimes involving intentional sexual conduct by an adult with a child. Specifically, the court held that the Board's precedent decision in [Matter of Jimenez-Cedillo](#), 27 I&N Dec. 1 (BIA 2017), which held that statutes criminalizing sexual offenses against children are CIMTs regardless of whether they require a culpable mental state as to the child's age, so long as "the victim is particularly young" or "the age differential between the perpetrator and victim is significant," did not adequately explain its departure from the previous standard contained in the line of decisions culminating in [Matter of Silva-Trevino](#), 26 I&N Dec. 826 (BIA 2016), that such crimes are CIMTs if "the perpetrator knew or should have known that the victim was a minor."

Sixth Circuit

- [United States v. Morris](#)

No. 16-1349, 2018 WL 1321986 (6th Cir. Mar. 15, 2018) (Crime of Violence)

The Sixth Circuit determined that Michigan's felony assault statute, M.C.L. § 750.81, is not divisible and is not a crime of violence under the "elements" clause of U.S.S.G. § 4B1.2(a) (1), which is analogous to 18 U.S.C. § 16(a), because it can encapsulate merely offensive, and not harmful touching. The court found that the statute was a crime of violence only under a clause without an analogue in the immigration context.

Seventh Circuit

- [Cruz-Martinez v. Sessions](#)

No. 14-3754, 2018 WL 1308885 (7th Cir. Mar. 14, 2018) (Reinstatement of Removal Order)

The Seventh Circuit reaffirmed that illegal reentrants with reinstated removal orders are ineligible for asylum and precluded from challenging an underlying removal order more than 30 days after its entry. The court also determined that the Board appropriately declined to remand for consideration of new evidence that did not show the petitioner would be singled out for harm.

Ninth Circuit

- [United States v. Manzo-Rios](#)

No. 15-50429, 2018 WL 1249158 (9th Cir. Mar. 12, 2018) (unpublished) (Controlled Substance)

The Ninth Circuit held that the petitioner was removable under section 237(a)(2)(B)(i) of the Act because his conviction for possession of a controlled substance under California Health and Safety Code § 11350(a) is divisible as to the controlled substance. The court also determined that, in applying the modified categorical approach, the IJ permissibly

relied on the criminal complaint and an abstract of judgment to determine that the petitioner was convicted for possessing a federally controlled substance.

Tenth Circuit

- [Afamasaga v. Sessions](#)

No. 17-9528, 2018 WL 1371206 (10th Cir. Mar. 19, 2018) (unpublished) (CIMT)

The Tenth Circuit denied the PFR, holding that the petitioner's conviction for making a false statement when applying for an American passport under 18 U.S.C. § 1542 is categorically a CIMT, because "the applicant must knowingly make a false statement with the specific intent that the false statement should be acted upon by the Government."

- [Munguia-Baeza v. Sessions](#)

No. 17-9532, 2018 WL 1357369 (10th Cir. Mar. 16, 2018) (unpublished) (CIMT)

The Tenth Circuit granted the PFR, holding that the petitioner's conviction for first-degree aggravated motor vehicle theft under Colo. Rev. Stat. § 18-4-409 is not a CIMT because, unlike similar Colorado theft offenses, the statute of conviction does not require a specific intent to permanently deprive someone of the item's use or benefit.

Eleventh Circuit

- [In re Welch](#)

No. 18-10592-H, 2018 WL 1325013 (11th Cir. Mar. 15, 2018) (Crime of Violence)

The court determined that Alabama's first degree assault, Ala. Code. § 13A-6-20(a)(1), is a crime of violence under the "elements" clause of the ACCA's 18 U.S.C. § 924(e)(2)(B), which is analogous to 18 U.S.C. § 16(a). Specifically, the court found that the statute's requirement of serious physical injury could not be accomplished without the use of physical force.